**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR**

**WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929**

**MFA.No. 75 of 2003(B)**
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**WCC.81/2000 of W.C.C.,THRISSUR**
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**APPELLANT: 2ND OPP.PARTY**
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**NATIONAL INSURANCE COMPANY LTD.,**
**MAIN ROAD, IRINJALAKUDA.**

**BY ADV. SRI.RAJAN P.KALIYATH**

**RESPONDENTS: APPLICANTS AND OPP.PARTY 1.**
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**1. MATHEWS, S/O. THOMAS, PALLITHARA HOUSE,**
**RESIDING AT THURAVANCAD DESOM, PULLUR VILLAGE,**
**PULLUR POST, MUKUNDAPURAM TALUK, THRISSUR DISTRICT**

**2. P.P.ASOKAN, PADUKATTIL HOUSE,**
**PULLUR POST.**

**BY ADV. SRI.P.V.BABY**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 21.11.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

# K. PADMANABHAN NAIR, J.

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**M.F.A. NO. 75 OF 2003**

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**Dated this the 21st day of November, 2007**

## J U D G M E N T

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**The National Insurance Company Ltd., who is the second opposite party in W.C.C. No.81 of 2000 on the file of the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Thrissur, is the appellant. First respondent workman filed an application claiming compensation alleging that he sustained an employment injury. First respondent was the driver of an Autorikshaw bearing Reg. No.KL-8/A-8834, owned by the second respondent. On 10.12.1999 while the first respondent was driving the vehicle it capsized and he sustained injuries including a fracture on the medial malleolus. Second respondent did not contest the matter. Appellant alone contested the case. It was contended that the first respondent was not a workman under the second respondent and there was no employer-employee relationship between them. It was also contended that the first respondent was not possessed of a valid licence at the time of accident. The Deputy Labour Commissioner found**

that the first respondent was an employee of the second respondent and he sustained the injury during the course of employment. Relying on the certificate issued by A.W.1, the Commissioner awarded an amount of Rs.77,047/- as compensation. Challenging that order, this appeal is filed.

2. First respondent produced Exhibit A1 disability certificate issued by A.W.1 who was a Professor attached to the Medical College Hospital, Thrissur. In Exhibit A1 the Doctor assessed the permanent disability at 15% and the loss of earning capacity was assessed as 45%.

3. Learned counsel appearing for the appellant has argued that absolutely no reason whatsoever is stated in Exhibit A1 for fixing first respondent's disability at 15% and loss of earning capacity at 45%. It is argued that the first respondent sustained the injury on 10.12.1999 and he was treated as an inpatient in the Government Hospital from 10.12.1999 to 21.12.1999. It is also argued that thereafter the first respondent consulted A.W.1 only for the purpose of getting the disability certificate. Appellant had also filed a petition for a direction to the first respondent to appear before a Medical Board for assessing his disability and loss of

earning capacity. The Commissioner rejected that application finding that the assessment was made by a qualified medical practitioner and awarded compensation. A.W.1 in his cross-examination admitted that even on the date of issuance of Exhibit A1, first respondent was undergoing treatment. The Doctor, A.W.1, had not stated any details as to how he had fixed the disability and loss of earning capacity of the first respondent. The Commissioner also did not consider, even assuming that the disability certificate is correct, whether loss of earning capacity can be only a specified job or for all jobs. In Exhibit A1 the loss of earning capacity fixed at 45% is only for driving an Autorikshaw. But the Doctor, who issued Exhibit A1 disability certificate, has not assessed as to what exactly is his general loss of earning capacity. So the dismissal of the application filed by the appellant for a direction to the first respondent to appear before a Medical Board is illegal land unsustainable. The decision taken by the Commissioner that the first respondent was having 45% loss of earning capacity is also unsustainable. I am of the view that the loss of earning capacity has to be assessed after examining the first respondent by a Medical Board. For that

purpose, the case has to go back.

4. In the result, the appeal is allowed. The order passed by the Workmen's Compensation Commissioner (Deputy Labour Commissioner), in W.C.C. NO. 81 of 2000 is hereby set aside and the matter is remanded. The order passed by the Commissioner rejecting the application filed by the appellant for a direction to the first respondent to appear before a Medical Board is also set aside. That application is allowed. The Commissioner is directed to take W.C.C. No.81 of 2000 back to file and dispose of the same afresh in accordance with law after obtaining a report from the Medical Board attached to the Medical College Hospital, Thrissur, regarding the loss of earning capacity of the first respondent.

Civil Miscellaneous Application No.345 of 2003 shall stand dismissed.

**K. PADMANABHAN NAIR, JUDGE.**

vsv

**K. PADMANABHAN NAIR, J.**

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**M.F.A. NO. 75 OF 2003**

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**J U D G M E N T**

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**21ST NOVEMBER, 2007**